United Nations CCPR/C/BIH/CO/3/Add.1

International Covenant on Civil and Political Rights

Distr.: General
9 August 2018

English only

Human Rights Committee

Concluding observations on the third periodic report of Bosnia and Herzegovina

Addendum

Information received from Bosnia and Herzegovina on follow-up to the concluding observations*

[Date received: 5 July 2018]

* The present document is being issued without formal editing.

GE.18-13155(E)

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1. A reply in connection to Recommendation 14, which relates to the issue of the implementation of the Covenant on Civil and Political Rights in Bosnia and Herzegovina, and the prosecution of crimes against humanity and values protected by international law, as well as providing support to victims and witnesses.

2. A proposal for the Revised National War Crimes Prosecution Strategy was submitted to the Council of Ministers of Bosnia and Herzegovina on 16 May 2018 for consideration and adoption.

3. Since all the goals set by the National War Crimes Prosecution Strategy have not been achieved within the deadlines, and given the number of war crimes cases in the BiH Prosecutor's Offices, the need for amendments to the Strategy (Revised) has arisen. In accordance with the above, on 12 April 2017 the Council of Ministers established a Working Group for drafting amendments to the National War Crimes Prosecution Strategy.

4. Given the identified problems in the implementation of the National Strategy, it is envisaged that amendments to the Strategy (Revised) would provide for adequate mechanisms that would improve war crimes cases prosecution in the courts and prosecutor's offices in BiH through the appropriate distribution of war crimes cases between the judiciary at the level of BiH and the Entities and the Brčko District of BiH and, above all, would ensure more efficient processing of the most complex and most important war crimes cases within the set deadlines.

5. Given the clear commitment of BiH that the most complex war crimes cases are prosecuted before the Court and the Prosecutor's Office of BiH, and that cases that are considered less complex are prosecuted before cantonal/district courts and prosecutor's offices of the Entities and the Basic Court of the Brčko District of BiH, i.e. the Prosecutor's Office of the Brčko District of BiH, one of the most important issues regarding the efficient prosecution of war crimes cases is the issue of case management or assignment of cases on the basis of objective and harmonized complexity criteria on the basis of which categorization of the complexity of war crime cases is carried out, i.e. transfer of cases to the Entity judiciary and judiciary of the Brčko District of BiH. In that sense, the amendments to the Strategy (Revised) contain amended criteria that will ensure the transfer of a large number of less complex cases to the judiciary of the Entities and the Brčko District of BiH. In the mentioned manner, the Court at the level of BiH, which is adequately staffed, will be relieved of less complex cases and can be dedicated to the processing of the most complex cases.

6. Further, it was necessary that the amendments to the Strategy (Revised) addressing all identified problems and proposed solutions include measures to improve the protection and support to witnesses and ensure them during and after the trial, which contributes to the conduct of war crimes proceedings in accordance with interests of justice and equity.

7. Furthermore, taking into account the difficulties encountered in claiming damages in both criminal and civil proceedings, one of the measures envisaged by the amendments to the Strategy (Revised) is improvement of the normative framework for awarding damages in civil proceedings when the applicants are under protection measures at the level of BiH, Entities and the Brčko District of BiH.

8. In war crimes proceedings, the Court of BiH, the Entity courts and the Curt of the Brčko District of BiH order for the protection measures of witnesses in accordance with the Law on Witness Protection under Threat and Vulnerable Witnesses, which are implemented during the criminal proceedings. In the context of ensuring equal standards for the protection of witnesses under threat and vulnerable witnesses in proceedings before all judicial institutions in BiH, amendments to the Strategy (Revised) have recognized a need for an analysis of relevant legal provisions with the aim of passing amendments to the Law that will ensure the establishment of a uniform protection mechanism and support to witnesses during the trial and after testimony or trial.

9. In addition to the Witness Support Department of the Court of BiH, currently a majority of cantonal and district courts in BiH, as well as the Basic Court of the Brčko District of BiH, have established departments to support witnesses and employed psychologists/assistants to provide support. The rooms and facilities were adapted for

witnesses mainly with the support by UNDP, which at the same time provided funds for long-term support staff for most institutions. Further, through the EU assistance program IPA 2012/2013, funds have been provided for the salaries of professionals to support witnesses in certain judicial institutions.

10. Therefore, in order to ensure that this extremely important segment of the processing of war crimes cases in courts and prosecutors' offices is adequately conducted, in accordance with the Strategy (Revised) it will be necessary to conduct an analysis of the situation regarding the support departments and staffing and to make need assessment for those institutions in which these professionals are not employed.

11. Further, in order to review the work of the departments and the statistics of cases and witnesses that have been supported, amendments to the Strategy (Revised) introduce a new measure regarding the submission of reports on the work of these departments.

12. The previous experience in providing support to witnesses and victims has shown that there is a need for a particular type of psychological support to the group to be provided during the investigation phase and at the trial stage, as well as to ensure coordination between these departments in courts and prosecutors' offices. Thus, the amendments to the Strategy (Revised) envisage a measure that seeks to further enhance cooperation between the witness support departments in the courts and prosecutor's offices in BiH in war crimes cases, in such a way that the Witness Support Departments of the Court of BiH and the Prosecutor's Office of BiH provide all the necessary support to the departments of Entity judicial institutions and the judicial institutions of the Brčko District of BiH.

13. Laws that provide for the right to legal aid were passed in Brcko District, the Republika Srpska and eight cantons of the Federation of Bosnia and Herzegovina.

14. The Law on Provision of Legal Aid ("Official Gazette of BiH" No. 83/16) was passed at the level of Bosnia and Herzegovina. This Law prescribes the forms of legal aid, entities to provide it and beneficiaries of legal aid, conditions and manner for granting it, funding and control of the provision of legal aid by the bodies and institutions of Bosnia and Herzegovina, as well as supervision over the implementation of this Law.

15. In accordance with this Law, the Competent Authority for Providing Legal Aid in Bodies and Institutions of Bosnia and Herzegovina is the Legal Aid Office of Bosnia and Herzegovina (hereinafter: the Office). In accordance with this Law, the Office is an internal organizational unit within the Ministry of Justice of Bosnia and Herzegovina. Civil servants of the Office are authorized to provide every form of legal aid except for representation in criminal proceedings before the Court and cross-border disputes.

16. However, the civil servants of the Office are authorized to represent in criminal proceedings a person injured (victim) through a criminal offense with a view to getting damages awarded (civil servants have already acted in several cases).

17. The Missing Persons Institute of Bosnia and Herzegovina, as an institution of a State party to the Covenant on Civil and Political Rights, is in daily contact with members of families of missing persons, as victims of criminal offenses against humanity and values protected by international law, through the Institute's Advisory Board, which consists of representatives of the Association of Families of Missing Persons.

18. The Institute takes care of and keeps the remains of missing persons until the moment they are handed over to the family, covers the costs of transport and burial of the remains, and keeps records of missing persons and issues certificates of the status of missing person in order to for family members of missing persons to exercise status-based entitlements. Further, employees in the regional and field offices of the Institute give all assistance required by family members with whom they cooperate on a daily basis in accordance with the mandate of the Institute.

19. Paragraph 20 – The attitude of the authorities in Bosnia and Herzegovina towards the issues of missing persons is not the same as in the countries in the region, although 7,146 missing persons are still searched for in Bosnia and Herzegovina. This attitude is best manifested in the fact that the authorities in Bosnia and Herzegovina have not fully

complied with the 2010 and 2016 reports of the United Nations Task Force on Enforced or Involuntary Disappearances, which recommend inter alia the following:

(a) The Missing Persons Institute should be supported and strengthened with adequate financial, human and technological resources and in particular the independence of the Institute should be guaranteed;

(b) To make more funds available to the Institute in order to enable it to work;

(c) All technology needed to detect the places where the missing persons were buried and for their exhumation should be provided to the Institute;

(d) The Council of Ministers should also strengthen the independence and autonomy of the Institute by regulating these details by law;

(e) More independence and autonomy should be given to the Institute by the amendments to the relevant law;

(f) More practical and financial support is needed by the Institute;

(g) The Institute should be supported by the authorities of the Republika Srpska to a greater extent.

20. Regarding the financial situation of the Missing Persons Institute of Bosnia and Herzegovina, the trend of permanent budget reduction is noticeable. Table 1 gives an overview of the Institute's budget from the time it was established to date.

Table 1
Approved Budget of the Missing Persons Institute from 2008 to 2018

No.	*Year*	*Approved budget from the total Budget of BiH*
1.	2008	BAM 6,455,467.00
2.	2009	BAM 6,069,000.00
3.	2010	BAM 4,358,000.00
4.	2011	BAM 3,156,030.00
5.	2012	BAM 3,066,000.00
6.	2013	BAM 3,217,000.00
7.	2014	BAM 3,248,000.00
8.	2015	BAM 3,223,000.00
9.	2016	BAM 3,342,000.00
10.	2017	BAM 3,334,000.00
11.	2018	BAM 3,004,000.00

21. The Institute does not possess modern, sophisticated technology or equipment that would facilitate work and increase the efficiency of the Institute in the field work, and it is necessary for the state to implement the recommendations of the WGEID Report in order to create the best possible conditions for accelerating the process of searching for missing persons.